

Message Text

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ACTION TRSE-00

INFO OCT-01 EA-11 ISO-00 NEA-10 IO-14 H-03 L-03 PRS-01

PA-04 USIA-15 SP-03 AID-20 EB-11 NSC-07 RSC-01

CIEP-02 SS-20 STR-08 OMB-01 CEA-02 CIAE-00 COME-00

FRB-02 INR-10 NSAE-00 XMB-07 OPIC-12 LAB-06 SIL-01

DRC-01 /176 W

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 2765

UNCLAS MANILA 4461

USADB

TREASURY FOR FINKEL PASS BRADFIELD/MEIGHER

EO 11652 NA

TAGS: EAID, EFIN

SUBJ: REGULATIONS GOVERNING THE ASIAN DEVELOPMENT FUND

1. AT APRIL 16 MEETING, BOARD FURTHER CONSIDERED AND INFORMALLY APPROVED DRAFT REGULATIONS GOVERNING THE ASIAN DEVELOPMENT FUND. FINAL APPROVAL BY BOARD SCHEDULED APRIL 18 AT WHICH TIME RESULTS OF GOVERNORS VOTES ON AMENDMENTS TO RESOLUTION #67 RECORDED.

2. BOARD ACCEPTED US PROPOSED AMENDMENT TO SEC 6.01 REGARDING PROVISION THAT PRIOR CONSENT IN WRITING OF ALL CONTRIBUTORS REQUIRED BEFORE COMING INTO EFFECT OF ANY AMENDMENT MODIFYING SEC 3.01(A). THE AMENDMENT, INSERTED IMMEDIATELY AFTER THE INTORDUCTORY PARA UNDER SEC 6.01, READS AS FOLLOWS:

QUOTE (A) THE PROVISIONS OF SEC 3.01(A) WHICH SPECIFIES THE MANNER IN WHICH THE BANK MAY USE THE RESOURCES OF THE UNCLASSIFIED

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FUND IN ITS OPERATIONS; END QUOTE

3. IN LIEU OF INCLUDING SIMILAR CAVEAT REGARDING SEC 7.02(B)
IN SEC 6.01, BANK'S DEPUTY GENERAL COUNSEL SUGGESTED
PROVIDING US DIRECTOR WITH LEGAL OPINION STATING THAT NO
AMENDMENT OF THE REGULATIONS GOVERNING THE ASIAN DEVELOPMENT
FUND COULD MODIFY OR NEGATE THE PROCUREMENT RESTRICTIONS
STIPULATED IN US CONTRIBUTION. OPINION FOLLOWS:

QUOTE TO: DIRECTOR REX BEACH
DIRECTOR REPRESENTING THE UNITED STATES
FROM: GRAEME F. REA
DEPUTY GENERAL COUNSEL

RE : ADF REGULATIONS: BANK'S POWER TO
AMEND REGULATIONS

1. DRAFT REGULATIONS FOR THE ASIAN DEVELOPMENT FUND
ARE AT PRESENT BEING CONSIDERED BY THE BOARD (DOC. 74-73,
REVISION 1, DATED 4 APRIL 1974). YOU HAVE ASKED ME TO
CONFIRM YOUR UNDERSTANDING THAT, UNDER THE REGULATIONS AS
DRAFTED AT PRESENT, THE BOARD OF DIRECTORS COULD NOT, BY
A SUBSEQUENT AMENDMENT OF THE REGULATIONS PURSUANT TO
SEC 6.01, MODIFY OR NEGATE A PROCUREMENT RESTRICTION ON
THE USE OF PARTICULAR CONTRIBUTED RESOURCES ACCEPTED
PURSUANT TO SEC 7.02(B).

2. I CONFIRM THAT YOUR UNDERSTANDING IS CORRECT. THE
ACCEPTANCE OF A PROCUREMENT RESTRICTION UNDER SEC 7.02(B)
HAS CONTRACTUAL EFFECT AS BETWEEN THE BANK AND THE PARTIC-
ULAR CONTRIBUTOR. ALTHOUGH THE MAKING OF SUCH A SPECIAL
CONTRACTUAL ARRANGEMENT IS PERMITTED BY THE REGULATIONS,
THE ARRANGEMENT ITSELF DOES NOT FORM PART OF THE REGULATIONS.
IT COULD NOT, THEREFORE, BE SUBSEQUENTLY AMENDED OR NEGATED
UNILATERALLY BY THE BANK BY AN AMENDMENT OF THE REGULATIONS
PURSUANT TO SEC 6.01. IT COULD ONLY BE ALTERED BY FURTHER
AGREEMENT BETWEEN THE BANK AND THE PARTICULAR CONTRIBUTOR
CONCERNED. END QUOTE.

4. AMENDMENT TO SEC 6.01 OF DRAFT REGULATIONS AND RECEIPT
OF BANK LEGAL OPINION SEEM TO APPROPRIATELY COVER ALL POINTS
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